THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17913 OF 2003

ORAL ORDER:

The writ petitioner was a licence holder in Form IL 24 for the year 2000-01. The said licence was issued on 30.4.2000 and was valid up to 31.3.2001. While so, the licence of the petitioner was suspended by order dated 30.3.2001, on the allegation that in the inspection conducted by the Station House Officer, Pakala and Prohibition & Excise Inspector, Chittoor, non-duty paid liquor was found in the licensed premises of the petitioner. Aggrieved by the said order, the petitioner preferred an appeal before the Deputy Commissioner of Prohibition and Excise, Ananthapur, and the same was dismissed. On a further appeal, the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, held that one P. Madhu Mohan Reddy, *nowkarnama* holder was running the shop forcibly on the date of the inspection and that the petitioner had no effective control over the licensed premises and, therefore, he could not be held responsible for the contraband seized in the licensed premised. Accordingly, the order of suspension was set aside and the appeal was allowed by order dated 18.7.2001. Pursuant thereto, the licence of the petitioner was restored by the 2nd respondent by order dated 1.8.2001 and the licence was renewed for the year 2001-02. In the meanwhile, since the petitioner had already paid the quarterly licence fee for the period from 1.4.2001 to 31.7.2001 to the tune of Rs.95,000/-, he made an application before the 2nd respondent for refund of the said licence fee, on the ground that by virtue of the order of suspension, he could not carry on the business from 1.4.2001 to 31.7.2001. The said request of the petitioner was dismissed by the 2nd respondent by order dated 4.3.2003, holding that as per Section 31(3) of the A.P. Excise Act, 1968 (for short "the Act"), the licensee is not entitled to any compensation or refund of any licence fee on the ground of

cancellation or suspension of the licence. The said order is under challenge in this writ petition.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

The learned counsel for the petitioner contended that since, admittedly, the order of suspension of the petitioner's licence was set aside on appeal, the petitioner is entitled for refund of the licence fee for the period during which the business was closed on account of wrongful suspension. In support of his submission, the learned counsel for the petitioner placed reliance upon the decisions of this Court in **K. Subba Reddy v. Government of A.P.**[1] and W.P.No.5020 of 2001 dated 21.3.2001.

On the other hand, the learned Government Pleader while relying upon Section 31(3) of the Act contended that the impugned order does not warrant any interference. The learned Government Pleader has also placed before this Court Memo No.1995/Ex-III-2/2001 dated 12.4.2005, wherein the Commissioner of Prohibition and Excise was informed by the Government that the licensees whose revision petitions were allowed on benefit of doubt are not entitled for refund of the licence fee.

A perusal of the order dated 18.7.2001, passed by the Commissioner of Prohibition and Excise, shows that while allowing the appeal preferred by the petitioner, a clear finding was recorded that on the date of inspection, the petitioner was not in effective control of the licensed premises. Obviously, the said fact was not taken into consideration by the 2nd respondent while passing the impugned order.

The learned counsel for the petitioner has also placed reliance upon G.O.Ms.No.122 Revenue (Excise III) Department, dated 2.3.2000, which provides for refund of the licence fee for the period during which the licensee could not carry on business on account of wrongful suspension of licence.

Since, admittedly, the said aspects were not taken into consideration by the 2nd respondent, and the impugned order was passed mechanically merely repeating the language of sub-section (3) of Section 31 of the Act, I am of the opinion that the matter requires reconsideration.

Accordingly, the impugned order dated 4.3.2003 is set aside and the 2nd respondent is directed to reconsider the request of the petitioner afresh, in the light of the observations made above and pass appropriate orders in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

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(G. ROHINI, J.)

21st August, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17913 OF 2003

21st August, 2006.

Between:

S. Chandrasekhar Reddy. .. Petitioner.

And

The Commissioner, Prohibition & Excise,
Nampally, Hyderabad and another. .. Respondents.

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[1] 2000(1) ALT 64.